

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CONSUME, ET AL,)
Plaintiffs,)
)
-V-) CIVIL DOCKET NO.
) 01-12257-PBS
ABBOTT LABORATORIES, ET AL,)
)
Defendants.)

MOTION HEARING
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

January 31, 2008

Boston, Massachusetts

APPEARANCES ON PAGE 2

Proceedings recorded by electronic sound recording,
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1 Every personnel file that contained responsive
2 information, under the Court's order, we have given them.
3 Every one we could find, they got it. So if they don't have
4 it, we don't have it.

5 Or, there are a few files for which we looked at
6 them, and they only contained information that was of the
7 nature your Honor said was not responsive: resumes,
8 applications, things of that nature.

9 To the extent we found files that contained any
10 information your Honor told us we had to produce: about
11 what these people were paid, how they were paid, any of that
12 kind of information, we have produced it.

13 If they don't have them, it's because we don't
14 have them; or they had none of the information that your
15 Honor told us to be produced.

16 The personal working files of all these people is
17 a much more difficult undertaking to deal with.

18 What they're talking about is, what do the people
19 distributed across the country, out in the field, doing
20 field sales have in their personal files at home. Most of
21 these people work at home; they don't have an office.

22 And they're looking for it back to 1991, for
23 people who work in a division of Abbott from 1991 to 2003
24 and then later discontinued; the entire division.

25 What we're doing to try and comply with that

1 request is multi-fold and it takes a lot of time and is a
2 big effort.

3 First, the Court should understand in terms of
4 what working files these people in the field have. It is
5 our understanding a lot of witness have testified to this,
6 that when these people would leave Abbott -- obviously, a
7 lot of the people we're talking about on this list of
8 persons who have worked over the years are no longer with
9 Abbott or with Hospira.

10 When they would leave, their working files went to
11 the person who took over the group, or took over the
12 territory.

13 And so, it would be our expectation that those
14 files, to the extent they came through the years, would be
15 in the possession of the current sales force of Hospira
16 which, basically, amounts to the former HPD sales force.

17 So we have asked Hospira and Hospira is
18 cooperating in pulling together from across the country, the
19 working files of all of its current employees, which we
20 believe should capture the files through the years that came
21 over from Abbott.

22 We're in the process of doing that and producing
23 that information to the Government. It takes -- I think the
24 Court could appreciate -- a long time to do.

25 We are also looking through any archive records

1 that might be under these individuals to see if there might
2 be additional materials they have.

3 When we make contact, when we have the witnesses
4 that they want, we have asked them specifically again, "Look
5 through your files and make sure you don't have any
6 responsive information."

7 Persons that look and say they don't, have
8 executed these certifications, which we're giving to the
9 Government, we're happy to continue giving them to the
10 Government, so they know and can make sure we've checked
11 them all.

12 Persons that have information that's potentially
13 responsive, they give it to us, we look at it, we give it to
14 them if it is responsive.

15 So, that's where we are. They are also, for all
16 these former employees, they are serving subpoenas on.

17 So, on top of everything we're already doing, they
18 are serving individuals subpoenas on the formers.

19 I have them go look through all of their files to
20 see if there is anything still left. Some of them do have
21 things. If they've got them and they're responsive, we give
22 them to them.

23 So, that's where we are. I think we are
24 cooperating fully. We are going, particularly with respect
25 to all these former employees, since not a single one of

1 at trial and we want 30(b)(1) testimony from them, but their
2 personal knowledge about their personal perspectives on the
3 issues in the case, I don't believe that the 30 --

4 THE COURT: Well, haven't they told you in the
5 affidavits if they don't have any personal knowledge?

6 MR. GOBENA: Well, but affidavits crafted by
7 lawyers don't necessarily meet the burden of us being able
8 to explore in detail what they really know. I mean--

9 THE COURT: You are getting into a risky area with
10 an accusation.

11 MR. GOBENA: Well, I'm not accusing anyone of any
12 wrongdoing. However, there's a different situation--

13 THE COURT: That was the tone of that.

14 MR. GOBENA: Your Honor, if that was a tone, I
15 apologize.

16 My point is that there's a difference between a
17 know-nothing affidavit being submitted, and us having the
18 ability to challenge that know-nothing affidavit with
19 documents, with evidence that we have that have these
20 people's names and information involved with it. And that's
21 what we have.

22 One of the people, for example, Richard Gonzalez,
23 he was the head of the Hospital Products Division, which is
24 the division whose conduct is at issue here. He was
25 directly involved in discussions about this 2001 price